

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	CASE NOS. 2016-66 & 2016-73
Pharmacist License of	)	
	)	
<b>KENNETH O. ENGEL</b>	)	<b>NOTICE OF HEARING AND</b>
License No. 14743	)	<b>STATEMENT OF CHARGES</b>
Respondent.	)	

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**COMES NOW** the Iowa Board of Pharmacy ("Board") and files this Notice of Hearing and Statement of Charges against Ken Engel pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 272C.3(1)(e), and 657 Iowa Administrative Code rules 35.5 and 36.5. Respondent's Iowa pharmacist license number 14743 is currently active through June 30, 2018.

**A. TIME, PLACE, AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on March 7, 2017 before the Board. The hearing shall begin at 9:00 am and shall be located in the Board conference room located at the Iowa Board of Pharmacy Office, 400 S.W. 8<sup>th</sup> Street, Suite E, Des Moines, Iowa, 50309-4688.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges, you may file an Answer pursuant to 657 Iowa Administrative Code rule 35.11. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Filing of Pleadings. Pleadings shall be filed with the Board at the following address: Iowa Board of Pharmacy, 400 S.W. 8<sup>th</sup> Street, Suite E, Des Moines, Iowa, 50309-4688.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing.

Pre-hearing Conference. Any party may request a prehearing conference in accordance with 657 Iowa Administrative Code rule 35.15 to discuss issues related to the hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 Iowa Administrative Code chapter 35. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. If you need to request an alternative time or date for the hearing, you must comply with the requirements in 657 Iowa Administrative Code rule 35.16. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The Office of Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address:

Meghan Gavin  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319

Ms. Gavin can also be reached by phone at (515) 281-6736 or by e-mail at [Meghan.Gavin@iowa.gov](mailto:Meghan.Gavin@iowa.gov).

Communications. You may contact the Board office at (515) 281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and the opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2015).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 147, 155A, and 272C, and 657 Iowa Administrative Code chapter 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 Iowa Administrative Code rule 35.21.

## **C. CHARGES**

### **COUNT I**

#### **FAILURE TO PROPERLY VERIFY AND DOCUMENT**

Respondent is charged with failing to provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to delivery in violation of Iowa Code sections 147.55(9) and 155A.12(1), and 657 Iowa Administrative Code rules 8.3(4)(c) and 36.1(4)(u), (ap).

### **COUNT II**

#### **VIOLATION OF THE DUTIES OF THE PHARMACIST-IN-CHARGE**

Respondent is charged with violating the duties of the pharmacist-in-charge in violation of Iowa Code section 147.55(9) and 155A.12(1), and 657 Iowa Administrative Code rules 8.3(4)(d), (i), (j), and 36.1(4)(u).

### **COUNT III**

#### **FAILURE TO MAINTAIN ANNUAL INVENTORY OF CONTROLLED SUBSTANCES**

Respondent is charged with failing to maintain an annual inventory of controlled substances in violation of Iowa Code section 147.55(9) and 155A.12(4) and 657 Iowa Administrative Code rules 10.35, and 36.1(4)(u), (ac).

### **COUNT IV**

#### **FAILURE TO MAINTAIN ADEQUATE SECURITY**

Respondent is charged with failing to maintain adequate security of the prescription department, including provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs in violation of Iowa Code section 147.55(9) and 155A.12(1) and 657 Iowa Administrative Code rules 6.7, 8.5(3), and 36.1(4)(u).

### **D. FACTUAL CIRCUMSTANCES**

#### ***Case 2016-66***

1. Respondent is the pharmacist-in-charge and owner of Noel Pharmacy in North English, Iowa.
2. On April 12, 2016, Noel Pharmacy was faxed a prescription for Patient 1 for Lamisil. The generic name for Lamisil is Terbinafine.
3. Noel Pharmacy filled the prescription for Patient 1 with Keppra instead of Lamisil. The generic name for Keppra is Levetireacetam.
4. No incident report was filled out.

#### ***Case 2016-73***

1. Respondent is the pharmacist-in-charge and owner of Peterson Drug Company in Williamsburg, Iowa.
2. Respondent divides his time between Peterson Drug Company and Noel Pharmacy.
3. Peterson Drug Company is open 9am to 5pm Monday through Friday.
4. A pharmacist is only present at Peterson Drug Company from approximately 1pm to 5pm each day.
5. There is no ability to secure the pharmacy in absence of the pharmacist.

6. Peterson Drug Company was cited for the lack of security and deficiency in pharmacist hours during routine inspections in 2012, 2014, and 2016.

7. During the 2012, 2014, and 2016 inspections, Peterson Drug Company was also cited for failure to conduct an annual controlled substance inventory.

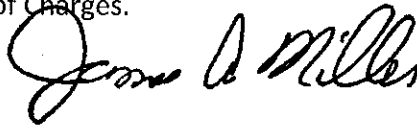
8. In 2012 and 2014, Respondent signed the inspection report noting these deficiencies.

#### **E. SETTLEMENT**

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 Iowa Administrative Code rule 36.6. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General Meghan Gavin at (515) 281-6736.

#### **F. FINDING OF PROBABLE CAUSE**

On this 4<sup>th</sup> day of January 2017, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.



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Chairperson  
Iowa Board of Pharmacy

Copy to:

Meghan Gavin  
Assistant Attorney General  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-5944. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).